

LEGISLATURE OF NEBRASKA
NINETY-SEVENTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 876

FINAL READING

Introduced by Brashear, 4

Read first time January 9, 2002

Committee: Judiciary

A BILL

1 FOR AN ACT relating to law; to amend sections 24-209, 25-217,
2 25-318, 25-321, 25-323, 25-328, 25-330, 25-331, 25-501,
3 25-503.01, 25-504.01, 25-516.01, 25-531, 25-1002,
4 25-1063, 25-1064.01, 25-1075, 25-1085, 25-1102, 25-1321,
5 25-1715, 25-2005, 25-2124, 25-2125, 25-2137 to 25-2140,
6 25-2142, 25-2143, 25-2148, 25-2151, 25-2162, 25-2170,
7 25-2171, 25-2178, 25-21,108, 25-21,113, 25-21,115,
8 25-21,124, 25-21,134, 25-21,156, 25-21,202, 25-21,206,
9 25-21,223, 25-2210, 25-2211, 25-2221, 25-2226, 29-3920,
10 33-107.01, 42-351, 44-2833, 44-2840, 44-2841, 44-2842,
11 76-1441, 76-1442, 77-1904, and 77-1906, Reissue Revised
12 Statutes of Nebraska, sections 25-519, 25-525, 25-1506,
13 25-2002, 25-2704, 25-2805, 45-103, 60-4,105, 76-1002,
14 77-1917, and 81-1316, Revised Statutes Supplement, 2000,
15 and sections 13-518, 25-2924, 25-2925, 25-2928, 29-2709,
16 29-3921, 29-3927, 29-3931, 29-3932, 29-3933, 29-4121, and

1 29-4122, Revised Statutes Supplement, 2001; to change and
2 eliminate general civil procedure pleading provisions; to
3 rename the County Revenue Assistance Fund; to change
4 provisions relating to the Commission on Public Advocacy,
5 reimbursement to counties, court holidays, distribution
6 of court reports, a legal services fee, court
7 jurisdiction in dissolution of marriage proceedings,
8 interest on decrees and judgments, and trust deeds; to
9 change and terminate provisions relating to settlement
10 escrow; to harmonize provisions; to provide duties for
11 the Revisor of Statutes; to provide operative dates; to
12 repeal the original sections; to outright repeal sections
13 25-801 to 25-823, 25-832 to 25-838, 25-841 to 25-856,
14 25-2175, 77-1905, and 77-1907, Reissue Revised Statutes
15 of Nebraska; and to declare an emergency.
16 Be it enacted by the people of the State of Nebraska,

1 Section 1. (1) By January 1, 2003, the Supreme Court
2 shall have rules of pleading in civil actions promulgated which are
3 not in conflict with the statutes governing such matters.

4 (2) For all civil actions filed on or after January 1,
5 2003:

6 (a) The rules of pleading promulgated by the Supreme
7 Court shall apply;

8 (b) The plaintiff's initial pleading shall be a petition
9 when that designation is provided elsewhere by statutes. In all
10 other civil actions the plaintiff's initial pleading shall be a
11 complaint;

12 (c) The cross-petition, cross-bill, and cross-suit are
13 abolished. Demurrers to a pleading and special appearances shall
14 not be used. The plea in bar, plea in abatement, and other
15 dilatory pleas shall not be used in civil actions; and

16 (d) All pleadings shall be construed as to do substantial
17 justice.

18 Sec. 2. (1) An amendment of a pleading that does not
19 change the party or the name of the party against whom the claim is
20 asserted relates back to the date of the original pleading if the
21 claim or defense asserted in the amended pleading arose out of the
22 conduct, transaction, or occurrence set forth or attempted to be
23 set forth in the original pleading.

24 (2) If the amendment changes the party or the name of the
25 party against whom a claim is asserted, the amendment relates back
26 to the date of the original pleading if (a) the claim or defense
27 asserted in the amended pleading arose out of the conduct,
28 transaction, or occurrence set forth or attempted to be set forth

1 in the original pleading, and (b) within the period provided for
2 commencing an action the party against whom the claim is asserted
3 by the amended pleading (i) received notice of the action such that
4 the party will not be prejudiced in maintaining a defense on the
5 merits and (ii) knew or should have known that, but for a mistake
6 concerning the identity of the proper party, the action would have
7 been brought against the party.

8 Sec. 3. Section 13-518, Revised Statutes Supplement,
9 2001, is amended to read:

10 13-518. For purposes of sections 13-518 to 13-522:

11 (1) Allowable growth means (a) for governmental units
12 other than community colleges, the percentage increase in taxable
13 valuation in excess of the base limitation established under
14 section 77-3446, if any, due to improvements to real property as a
15 result of new construction, additions to existing buildings, any
16 improvements to real property which increase the value of such
17 property, and any increase in valuation due to annexation and any
18 personal property valuation over the prior year and (b) for
19 community colleges, the percentage increase in excess of the base
20 limitation, if any, in full-time equivalent students from the
21 second year to the first year preceding the year for which the
22 budget is being determined;

23 (2) Capital improvements means (a) acquisition of real
24 property or (b) acquisition, construction, or extension of any
25 improvements on real property;

26 (3) Governing body has the same meaning as in section
27 13-503;

28 (4) Governmental unit means every political subdivision

1 which has authority to levy a property tax or authority to request
2 levy authority under section 77-3443 except sanitary and
3 improvement districts which have been in existence for five years
4 or less and school districts;

5 (5) Qualified sinking fund means a fund or funds
6 maintained separately from the general fund to pay for acquisition
7 or replacement of tangible personal property with a useful life of
8 five years or more which is to be undertaken in the future but is
9 to be paid for in part or in total in advance using periodic
10 payments into the fund. The term includes sinking funds under
11 subdivision (13) of section 35-508 for firefighting and rescue
12 equipment or apparatus;

13 (6) Restricted funds means (a) property tax, excluding
14 any amounts refunded to taxpayers, (b) payments in lieu of property
15 taxes, (c) local option sales taxes, (d) motor vehicle taxes, (e)
16 state aid, (f) transfers of surpluses from any user fee, permit
17 fee, or regulatory fee if the fee surplus is transferred to fund a
18 service or function not directly related to the fee and the costs
19 of the activity funded from the fee, (g) any funds excluded from
20 restricted funds for the prior year because they were budgeted for
21 capital improvements but which were not spent and are not expected
22 to be spent for capital improvements, and (h) any excess tax
23 collections returned to the county under section 77-1776; and

24 (7) State aid means:

25 (a) For all governmental units, state aid paid pursuant
26 to sections 60-305.15 and 77-3523;

27 (b) For municipalities, state aid to municipalities paid
28 pursuant to sections 18-2605, 39-2501 to 39-2520, 60-3007,

1 77-27,136, and 77-27,139.04 and insurance premium tax paid to
2 municipalities;

3 (c) For counties, state aid to counties paid pursuant to
4 sections 39-2501 to 39-2520, 47-119.01, 60-3001 to 60-3007,
5 77-27,136, and 77-3618, insurance premium tax paid to counties, and
6 reimbursements to counties from ~~the County Revenue Assistance Fund~~
7 under funds appropriated pursuant to section 29-3933;

8 (d) For community colleges, state aid to community
9 colleges paid under sections 85-1536 to 85-1537.01;

10 (e) For natural resources districts, state aid to natural
11 resources districts paid pursuant to section 77-27,136; and

12 (f) For educational service units, state aid appropriated
13 under section 79-1241.

14 Sec. 4. Section 24-209, Reissue Revised Statutes of
15 Nebraska, is amended to read:

16 24-209. (1) One copy of the Nebraska Reports and one
17 copy of the Nebraska Appellate Reports shall be furnished by the
18 Supreme Court to each judge of the Supreme Court, Court of Appeals,
19 Nebraska Workers' Compensation Court, and district, separate
20 juvenile, and county courts, to each county law library, and to
21 each state library, ~~to each officer of the executive departments of~~
22 ~~this state, to the Clerk of the Legislature, and to each judge of~~
23 ~~the United States District and Circuit Courts of this state, and~~
24 two copies of such reports shall be furnished to the Legislative
25 Council. The State Court Administrator shall be furnished as many
26 additional copies as he or she deems necessary for the operation of
27 the Court of Appeals and the Supreme Court. ~~7 two copies, to the~~
28 ~~library of the College of Law of the University of Nebraska, as~~

1 provided in sections ~~85-176~~ and ~~85-177~~, to the Nebraska
2 Publications Clearinghouse, eight copies, and to the State Court
3 Administrator's Office, up to fifteen copies.

4 (2) One advance copy of the opinions of the Nebraska
5 Supreme Court in pamphlet form, known as the Nebraska Advance
6 Sheets, and one advance copy of the opinions of the Nebraska Court
7 of Appeals in pamphlet form, known as the Decisions of the Nebraska
8 Court of Appeals, shall be furnished to each judge of the Supreme
9 Court, Court of Appeals, Nebraska Workers' Compensation Court, and
10 district, separate juvenile, and county courts, as many advance
11 copies as may be requested by the members of the Legislature shall
12 be furnished to the Clerk of the Legislature, ~~two advance copies~~
13 ~~shall be furnished to each standing committee of the Legislature,~~
14 ~~up to twenty-five advance copies shall be furnished to the Attorney~~
15 ~~General, one advance copy shall be furnished to the Governor,~~ and
16 the State Court Administrator shall be furnished as many advance
17 copies as he or she deems necessary for the operation of the Court
18 of Appeals and the Supreme Court.

19 (3) The balance of the Nebraska Reports, Nebraska
20 Appellate Reports, Nebraska Advance Sheets, and Decisions of the
21 Nebraska Court of Appeals shall be sold as called for at such price
22 as shall be prescribed by the Supreme Court. The Supreme Court
23 shall also prescribe the price for microform copies of the reports.
24 The money received from such sales shall be paid into the Supreme
25 Court Reports Cash Fund which is hereby created.

26 (4) Upon request from any office or entity entitled to
27 free copies of the Nebraska Reports, the Nebraska Appellate
28 Reports, the Nebraska Advance Sheets, or the Decisions of the

1 Nebraska Court of Appeals, the court may stop sending the
2 publications to such office or entity until the request is
3 withdrawn.

4 Sec. 5. Section 25-217, Reissue Revised Statutes of
5 Nebraska, is amended to read:

6 25-217. An action is commenced on the date the ~~petition~~
7 complaint is filed with the court. The action shall stand
8 dismissed without prejudice as to any defendant not served within
9 six months from the date the ~~petition~~ complaint was filed.

10 Sec. 6. Section 25-318, Reissue Revised Statutes of
11 Nebraska, is amended to read:

12 25-318. Of the parties to the action, those who are
13 united in interest ~~must~~ shall be joined as plaintiffs or
14 defendants; but if the consent of one who should have been joined
15 as plaintiff cannot be obtained, he or she may be made a defendant,
16 the reason being stated in ~~petition~~ the complaint.

17 Sec. 7. Section 25-321, Reissue Revised Statutes of
18 Nebraska, is amended to read:

19 25-321. When the plaintiff ~~shall be~~ is ignorant of the
20 name of the defendant, such defendant may be designated in any
21 pleading or proceeding by any name, or any name and description,
22 followed by the words, "real name unknown". In any such case the
23 person intended shall thereupon be regarded as a defendant in such
24 action or proceeding and as sufficiently identified therein for all
25 purposes, including service of summons or constructive service when
26 authorized and as prescribed ~~by the Code of Civil Procedure of the~~
27 State of Nebraska in Chapter 25. In any action wherein it is
28 alleged in the ~~petition~~ complaint or other pleading that there are

1 persons who have or that there are persons who claim or appear to
2 have some interest in, right or title to, or lien upon any real or
3 personal property within this state involved in such action, and
4 that the ownership of, interest in, rights or title to, or lien
5 upon such property of such persons, does not appear of record, in
6 or by their respective names, in the county wherein such property
7 is situated, and that the plaintiff or person in whose behalf such
8 allegations are made, after diligent investigation and inquiry, is
9 unable to ascertain and does not know the names or whereabouts if
10 in this state, or the residence of such persons, such action may
11 proceed against all such persons designated as "all persons having
12 or claiming any interest in" such property which shall be
13 accurately and definitely described, followed by the words, "real
14 names unknown".

15 Sec. 8. Section 25-323, Reissue Revised Statutes of
16 Nebraska, is amended to read:

17 25-323. The court may determine any controversy between
18 parties before it when it can be done without prejudice to the
19 rights of others or by saving their rights; but when a
20 determination of the controversy cannot be had without the presence
21 of other parties, the court must order them to be brought in.

22 Any person whose negligence was or may have been a
23 proximate cause of an accident or occurrence alleged by the
24 plaintiff, other than parties who have been released by the
25 plaintiff and are not subject to suit pursuant to section
26 25-21,185.11, may be brought into the suit by any ~~defendant party~~
27 in the manner provided in section 25-331 or 25-705. ~~by any~~
28 ~~plaintiff in the manner provided in sections 25-849 and 25-852.~~

1 Sec. 9. Section 25-328, Reissue Revised Statutes of
2 Nebraska, is amended to read:

3 25-328. Any person who has or claims an interest in the
4 matter in litigation, in the success of either of the parties to an
5 action, or against both, in any action pending or to be brought in
6 any of the courts of the State of Nebraska, may become a party to
7 an action between any other persons or corporations, either by
8 joining the plaintiff in claiming what is sought by the ~~petition~~
9 complaint, or by uniting with the defendants in resisting the claim
10 of the plaintiff, or by demanding anything adversely to both the
11 plaintiff and defendant, either before or after issue has been
12 joined in the action, and before the trial commences.

13 Sec. 10. Section 25-330, Reissue Revised Statutes of
14 Nebraska, is amended to read:

15 25-330. The intervention shall be by ~~petition~~ complaint,
16 which ~~must~~ shall set forth the facts on which the intervention
17 rests, and all the pleadings therein shall be governed by the same
18 rules as ~~obtain in regard to~~ other pleadings provided for by ~~this~~
19 ~~code~~ in Chapter 25. If such ~~petition~~ complaint is filed during
20 term, the court shall direct the time in which answers thereto
21 shall be filed.

22 Sec. 11. Section 25-331, Reissue Revised Statutes of
23 Nebraska, is amended to read:

24 25-331. (1) At any time after commencement of the
25 action, a ~~defendant~~ defending party, as a third-party plaintiff,
26 may cause a summons and complaint to be served upon a person not a
27 party to the action who is or may be liable to ~~him~~ the third-party
28 plaintiff for all or part of the plaintiff's claim against ~~him~~ the

1 third-party plaintiff. The third-party plaintiff need not obtain
2 leave to make the service if the third-party plaintiff files the
3 third-party complaint not later than ten days after filing the
4 original answer. Otherwise the third-party plaintiff must obtain
5 leave of the trial court on motion upon notice to all parties to
6 the action. before filing a third-party complaint. When
7 authorized by the trial court the The person served with the
8 summons and third-party complaint, hereinafter called the
9 third-party defendant, shall have all the rights of a defendant
10 including the rights authorized by this section. The third-party
11 defendant may assert against the plaintiff any defenses which the
12 third-party plaintiff has to the plaintiff's claim. The
13 third-party defendant may also assert any claim against the
14 plaintiff arising out of the transaction or occurrence that is the
15 subject matter of the plaintiff's claim against the third-party
16 plaintiff. The plaintiff may assert any claim against the
17 third-party defendant arising out of the transaction or occurrence
18 that is the subject matter of the plaintiff's claim against the
19 third-party plaintiff. The third-party defendant shall have all
20 the rights of a defendant including the rights authorized by this
21 section. The court on its own motion, or motion of any party, may
22 move to strike the third-party claim, or for its severance or
23 separate trial if the third-party claim should delay trial, might
24 tend to confuse a jury, or in any way jeopardize the rights of the
25 plaintiff. A third-party defendant or subsequent defendants may
26 proceed under this section.

27 (2) When a counterclaim is asserted against a plaintiff,
28 the plaintiff may cause a third party to be brought in under

1 circumstances which under this section would entitle a defendant to
2 do so.

3 Sec. 12. Section 25-501, Reissue Revised Statutes of
4 Nebraska, is amended to read:

5 25-501. A civil action must be commenced by filing ~~of~~ a
6 ~~petition~~ complaint in the office of the clerk of a proper court.

7 Sec. 13. Section 25-503.01, Reissue Revised Statutes of
8 Nebraska, is amended to read:

9 25-503.01. (1) The summons shall be directed to the
10 defendant or defendants, and contain the names of the parties and
11 the name and address of the plaintiff's attorney, if any, otherwise
12 the address of the plaintiff. It shall notify defendant that in
13 order to defend the lawsuit an appropriate written response ~~must~~
14 shall be filed with the court within thirty days after service, and
15 that upon failure to do so the court may enter judgment for the
16 relief demanded in the ~~petition~~ complaint.

17 (2) A judgment by default shall not be different in kind
18 from that demanded in the ~~petition~~ complaint. If only special
19 damages are demanded a judgment by default shall not exceed the
20 amount demanded in the ~~petition~~ complaint.

21 Sec. 14. Section 25-504.01, Reissue Revised Statutes of
22 Nebraska, is amended to read:

23 25-504.01. A copy of the ~~petition~~ complaint shall be
24 served with the summons, except when service is by publication.
25 The plaintiff shall deliver to the clerk sufficient copies of the
26 ~~petition~~ complaint at the time it is filed.

27 Sec. 15. Section 25-516.01, Reissue Revised Statutes of
28 Nebraska, is amended to read:

1 25-516.01. (1) The voluntary appearance of the party is
2 equivalent to service.

3 (2) ~~Prior to filing any other pleading or motion, a~~
4 ~~special appearance may be made for the purpose of objecting to the~~
5 ~~jurisdiction of the court over the person of the defendant. The~~
6 ~~defendant's assertion of a claim for affirmative relief by way of~~
7 ~~counterclaim, cross-claim, or third-party claim waives any~~
8 ~~objection that the court erred in overruling the special~~
9 ~~appearance. The defendant's participation in proceedings on any~~
10 ~~issue other than jurisdiction over the person waives any objection~~
11 ~~that the court erred in overruling the special appearance except~~
12 ~~the objection that the defendant is not amenable to process issued~~
13 ~~by a court of this state A defense of lack of jurisdiction over the~~
14 ~~person, insufficiency of process, or insufficiency of service of~~
15 ~~process may be asserted only under the procedure provided in the~~
16 ~~pleading rules adopted by the Supreme Court. If any of those~~
17 ~~defenses are asserted either by motion or in a responsive pleading~~
18 ~~and the court overrules the defense, an objection that the court~~
19 ~~erred in its ruling will be waived and not preserved for appellate~~
20 ~~review if the party asserting the defense either (a) thereafter~~
21 ~~files a demand for affirmative relief by way of counterclaim,~~
22 ~~cross-claim, or third-party claim or (b) fails to dismiss a demand~~
23 ~~for such affirmative relief that was previously filed. If any of~~
24 ~~those defenses are asserted either by motion or in a responsive~~
25 ~~pleading and the court overrules the defense, an objection that the~~
26 ~~court erred in its ruling on any issue, except the objection that~~
27 ~~the party is not amenable to process issued by a court of this~~
28 ~~state, will be waived and not preserved for appellate review if the~~

1 party asserting the defense thereafter participates in proceedings
2 on any issue other than those defenses.

3 Sec. 16. Section 25-519, Revised Statutes Supplement,
4 2000, is amended to read:

5 25-519. The publication shall be made once in each week
6 for three successive weeks in some newspaper printed in the county
7 where the ~~petition~~ complaint is filed if there is any printed in
8 such county and, if there is not, in some newspaper printed in this
9 state of general circulation in that county. It ~~must~~ shall contain
10 a summary statement of the ~~object and prayer~~ claim for relief of
11 the ~~petition~~ complaint, mention the court wherein it is filed, and
12 notify the person or persons thus to be served when they are
13 required to answer.

14 Sec. 17. Section 25-525, Revised Statutes Supplement,
15 2000, is amended to read:

16 25-525. A party against whom a judgment or order has
17 been rendered without other service than by publication in a
18 newspaper, may, at any time within five years after the date of
19 entry of the judgment or order, have the same opened to allow the
20 applicant to appear in court and make a defense. Before the
21 judgment or order is opened, the applicant shall give notice to the
22 adverse party of the intention to make such application and shall
23 file a full answer to the petition or complaint, pay all costs, if
24 the court requires them to be paid, and make it appear to the
25 satisfaction of the court, by affidavit, that during the pendency
26 of the action the applicant had no actual notice thereof in time to
27 appear in court and make a defense. The title to any property, the
28 subject of the judgment or order sought to be opened, which by it,

1 or in consequence of it, has passed to a purchaser in good faith,
2 shall not be affected by any proceedings under this section, nor
3 shall the proceedings affect the title of any property sold before
4 judgment under an attachment. The adverse party, on the hearing of
5 an application to open a judgment or order, as provided by this
6 section, shall be allowed to present counter-affidavits, to show
7 that during the pendency of the action the applicant had notice
8 thereof in time to appear in court and make a defense.

9 Sec. 18. Section 25-531, Reissue Revised Statutes of
10 Nebraska, is amended to read:

11 25-531. When the summons has been served or publication
12 made, the action is pending so as to charge third persons with
13 notice of pendency. While the action is ~~and while~~ pending no
14 interest can be acquired by third persons in the subject matter
15 thereof, as against the plaintiff's title. In ~~PROVIDED, in~~ all
16 actions brought to affect the title to real property, the plaintiff
17 may either at the time of filing his or her ~~petition~~ complaint or
18 afterwards, file, or in case any defendant sets up an affirmative
19 cause of action, ~~and~~ demands relief which shall affect the title to
20 real estate, he or she may, at the time of filing such answer, or
21 at any time afterwards, file with the clerk or register of deeds of
22 each county in which the ~~said~~ real estate thus to be affected, or
23 any part thereof, ~~may be~~ is situated, a notice of the pendency of
24 such action. The notice shall contain ~~containing~~ the names of
25 the parties, the object of the action, and a description of the
26 property in such county sought to be affected thereby. If the
27 action ~~be~~ is for foreclosure of a mortgage, such notice ~~must~~ shall
28 contain the date of the mortgage, the parties thereto, and the time

1 and place of recording the same. The clerk or register of deeds of
2 such county shall record the notice thus filed and enter the same
3 upon the numerical index of all lands, any part of which is
4 included in the description in ~~said~~ the notice, for which he or she
5 shall be entitled to receive filing fees in accordance with
6 sections 33-109 and 33-112, to be paid by the person filing such
7 notice, and which shall be taxed as part of the costs in ~~said~~ the
8 action. From the time of filing such notice the pendency of such
9 action shall be constructive notice to any purchaser or
10 encumbrancer to be affected thereby. Every ~~and every~~ person
11 whose conveyance or encumbrance is subsequently executed or
12 subsequently recorded shall be deemed to be a subsequent purchaser
13 or encumbrancer, and shall be bound by all proceedings taken in
14 ~~said~~ the action after the filing of such notice to the same extent
15 as if he or she were made a party to the action. The court in
16 which such action was commenced or any judge thereof may at any
17 time thereafter on the application of any person aggrieved, ~~and~~ on
18 good cause shown, and on such notice as the court or judge may
19 determine, order ~~said~~ the notice to be canceled by the clerk or
20 register of deeds of any county in which ~~said~~ the notice may have
21 been filed or recorded by filing a notice of release. In actions
22 ~~where in which~~ such notice ~~may be~~ is filed in a county or counties,
23 other than the county in which the action ~~may be~~ is pending, the
24 county clerk or the register of deeds of the county in which the
25 action was begun may cancel such notice by executing a written
26 release under his or her hand and seal by reason of the ~~said~~ the
27 order of the court or judge, and forward such release by mail to
28 the county clerk or register of deeds of the county in which ~~said~~

1 the notice has been filed or recorded, and which certificate such
2 county clerk or register of deeds shall record in the records of
3 his or her office. At any time after such notice of pendency ~~shall~~
4 ~~have been~~ is recorded, the party on whose behalf the same was filed
5 or ~~his~~ the party's attorney of record may cause ~~said~~ the notice to
6 be canceled in the office of the county clerk or register of deeds
7 of any county in which ~~said~~ the notice ~~may have~~ has been filed or
8 recorded. Such cancellation may be made by written release in the
9 same manner as such cancellations are entered on order of the
10 court. For the service ~~herein~~ required by this section, the county
11 clerk or register of deeds shall be entitled to charge and receive
12 fees in accordance with sections 33-109 and 33-112, to be paid by
13 the party causing the service to be performed.

14 Sec. 19. Section 25-1002, Reissue Revised Statutes of
15 Nebraska, is amended to read:

16 25-1002. An order of attachment shall be approved by a
17 judge of any district court or county court only after there has
18 been presented to him or her an affidavit or affidavits based upon
19 personal knowledge (1) that the facts set forth in plaintiff's
20 ~~petition~~ complaint which state a valid cause of action and the
21 amount plaintiff is entitled to recover are true, (2) describing
22 the existence and approximate value of any of defendant's property
23 known to the plaintiff to be subject to the jurisdiction of the
24 court, and (3) stating specific facts demonstrating reasonable
25 cause that one or more of the grounds for an attachment enumerated
26 in section 25-1001 exist.

27 Sec. 20. Section 25-1063, Reissue Revised Statutes of
28 Nebraska, is amended to read:

1 25-1063. When it appears by the ~~petition~~ complaint that
2 the plaintiff is entitled to the relief demanded, and such relief
3 or any part thereof consists in restraining the commission or
4 continuance of some act, the commission or continuance of which
5 during the litigation would produce great or irreparable injury to
6 the plaintiff, or when, during the litigation, it appears that the
7 defendant is doing, or threatens, or is about to do, or is
8 procuring or suffering to be done, some act in violation of the
9 plaintiff's rights respecting the subject of the action and tending
10 to render the judgment ineffectual, a temporary injunction may be
11 granted to restrain such act, subject to the limitations of
12 sections 25-1062 to 25-1080. It may also be granted in any case
13 ~~where it is~~ specially authorized by statute.

14 Sec. 21. Section 25-1064.01, Reissue Revised Statutes of
15 Nebraska, is amended to read:

16 25-1064.01. Every order granting an injunction and every
17 restraining order shall: (1) Set forth the reasons for its
18 issuance; (2) be specific in terms; (3) describe in reasonable
19 detail, and not by reference to the ~~petition~~ pleading or other
20 document, the act or acts sought to be restrained; and (4) be
21 binding only upon the parties to the action, their officers,
22 agents, servants, employees, and attorneys, and those persons in
23 active concert or participation with them who receive actual notice
24 of the order by personal service or otherwise.

25 Sec. 22. Section 25-1075, Reissue Revised Statutes of
26 Nebraska, is amended to read:

27 25-1075. If the injunction is granted without notice,
28 the defendant, at any time before the trial, may apply, upon

1 notice, to the court in which the action is brought or any judge
2 thereof, to vacate or modify the same. The application may be made
3 upon the complaint or petition and affidavits upon which the
4 injunction is granted, or upon affidavits on the part of the party
5 enjoined, with or without answer. The order of the judge allowing,
6 dissolving, or modifying an injunction shall be returned to the
7 office of the clerk of the court in which the action is brought and
8 recorded and obeyed as if made by the court.

9 Sec. 23. Section 25-1085, Reissue Revised Statutes of
10 Nebraska, is amended to read:

11 25-1085. If a complainant ~~shall desire~~ desires the
12 appointment of a receiver at the commencement of the action, ~~he~~
13 ~~shall pray the complainant shall request~~ such appointment in ~~his~~
14 bill the complaint. If the occasion for a receiver ~~shall arise~~
15 arises while the suit is pending, the application shall be made by
16 a motion petition entitled in the cause, signed and verified by the
17 applicant, and setting forth the facts and circumstances making
18 such appointment necessary or proper.

19 Sec. 24. Section 25-1102, Reissue Revised Statutes of
20 Nebraska, is amended to read:

21 25-1102. An issue of fact arises ~~(1) upon material~~
22 ~~allegation in the petition denied by the answer, (2) upon a setoff~~
23 ~~or counterclaim presented in the answer and denied in the reply,~~
24 ~~and (3) upon material new matter in the answer or reply which shall~~
25 ~~be considered as controverted by the opposite party without further~~
26 pleading upon a material allegation in a pleading that is denied by
27 a responsive pleading or that is considered as denied or avoided
28 because no responsive pleading is required or permitted.

1 Sec. 25. Section 25-1321, Reissue Revised Statutes of
2 Nebraska, is amended to read:

3 25-1321. The complete record shall ~~be made up from~~
4 include the ~~petition~~ complaint, the process, the return, the
5 pleadings subsequent thereto, reports, verdicts, orders, judgments,
6 and all material acts and proceedings of the court. All +
7 ~~PROVIDED, however, that all~~ journal entries and all such filings as
8 are required to be entered in full in the appearance dockets,
9 shall, by reference, be made a part of the complete record for all
10 purposes, including the taxing of fees and costs, and need not be
11 reentered in the making up of such record; but if the items of an
12 account, or the copies of a paper attached to the pleadings, are
13 voluminous, the court may order the record to be made by
14 abbreviating the same, ~~or~~ by inserting a pertinent description
15 thereof, or by omitting them entirely. Evidence ~~must not be~~
16 ~~recorded~~ introduced at any proceeding is not part of the complete
17 record of the cause.

18 Sec. 26. Section 25-1506, Revised Statutes Supplement,
19 2000, is amended to read:

20 25-1506. The order of sale on all decrees for the sale
21 of mortgaged premises shall be stayed for the period of nine months
22 after the entry of such decree, whenever the defendant shall,
23 within twenty days after the entry of such decree, file with the
24 clerk of the court a written request for the same. If the
25 defendant makes no such request within twenty days, the order of
26 sale may issue immediately after the expiration thereof. As to any
27 mortgage executed after September 28, 1959, if the original
28 maturity of indebtedness secured by the mortgage is more than

1 twenty years after the date of the filing of the ~~petition~~ complaint
2 to foreclose the mortgage and the mortgage covered a lot or lots,
3 or any part thereof, in a regularly platted subdivision, or parcel
4 of residential property not exceeding three acres in area, the stay
5 period shall be three months, and, as to such a mortgage executed
6 after October 9, 1961, if such original maturity is more than ten
7 years but not more than twenty years from and after the date of the
8 filing of the foreclosure ~~petition~~ complaint, the stay period shall
9 be six months.

10 Sec. 27. Section 25-1715, Reissue Revised Statutes of
11 Nebraska, is amended to read:

12 25-1715. Costs may be allowed on a motion, ~~or demurrer,~~
13 in the discretion of the court or judge, not exceeding ten dollars,
14 which shall be absolute against the losing party on such ~~demurrer~~
15 ~~or motion, except that~~ PROVIDED, this provision shall not apply
16 to verbal motions ~~and demurrer~~ ~~ere tenus~~ during the course of the
17 trial.

18 Sec. 28. Section 25-2002, Revised Statutes Supplement,
19 2000, is amended to read:

20 25-2002. The proceedings to vacate or modify the
21 judgment or order on the grounds mentioned in subsection (4) of
22 section 25-2001 shall be by ~~petition verified by affidavit~~
23 complaint, setting forth the judgment or order, the grounds to
24 vacate or modify it, and the defense to the action, if the party
25 applying was defendant. On such ~~petition~~ complaint a summons shall
26 issue and be served as in the commencement of an action. Summons
27 shall not issue in any case in which there is upon the minutes of
28 the court, or among the files of the case, a waiver of error by the

1 party or the party's attorney, unless the court or a judge thereof
2 endorses upon the ~~petition~~ complaint permission to issue such
3 summons.

4 Sec. 29. Section 25-2005, Reissue Revised Statutes of
5 Nebraska, is amended to read:

6 25-2005. A judgment shall not be vacated on motion or
7 ~~petition~~ complaint, until it is adjudged that there is a valid
8 defense to the action in which the judgment is rendered, or, if the
9 plaintiff seeks its vacation, that there is a valid cause of
10 action; and ~~where~~ when a judgment is modified, all liens and
11 securities obtained under it shall be preserved to the modified
12 judgment.

13 Sec. 30. Section 25-2124, Reissue Revised Statutes of
14 Nebraska, is amended to read:

15 25-2124. In an action for the recovery of real property,
16 it shall be sufficient if the ~~plaintiff~~ complaint states ~~in his~~
17 ~~petition~~ that ~~he~~ the plaintiff has a legal estate therein, and is
18 entitled to the possession thereof, describing the same, and that
19 the defendant unlawfully keeps ~~him~~ the plaintiff out of the
20 possession. It shall not be necessary to state how the plaintiff's
21 estate or ownership is derived.

22 Sec. 31. Section 25-2125, Reissue Revised Statutes of
23 Nebraska, is amended to read:

24 25-2125. It shall be sufficient in such action if the
25 ~~defendant in his~~ answer denies generally the title alleged in the
26 ~~petition~~ complaint, or that ~~he~~ the defendant withholds possession,
27 as the case may be; but if ~~he~~ the defendant denies the title of the
28 plaintiff, possession by the defendant shall be taken as admitted.

1 ~~Where he~~ If the defendant does not defend for the whole premises,
2 the answer shall describe the particular part for which defense is
3 made.

4 Sec. 32. Section 25-2137, Reissue Revised Statutes of
5 Nebraska, is amended to read:

6 25-2137. All ~~petitions~~ complaints for the foreclosure or
7 satisfaction of mortgages shall be filed in the district court
8 where the mortgaged premises are situated.

9 Sec. 33. Section 25-2138, Reissue Revised Statutes of
10 Nebraska, is amended to read:

11 25-2138. Whenever a ~~petition shall be~~ complaint is filed
12 for the foreclosure or satisfaction of a mortgage, the court ~~shall~~
13 ~~have~~ has the power to decree a sale of the mortgaged premises, or
14 such part thereof as may be sufficient to discharge the amount due
15 on the mortgage, and the cost of suit.

16 Sec. 34. Section 25-2139, Reissue Revised Statutes of
17 Nebraska, is amended to read:

18 25-2139. When a ~~petition shall be~~ complaint is filed for
19 the satisfaction of a mortgage, the court ~~shall have~~ has the power
20 only to decree and compel the delivery of the possession of the
21 premises to the purchaser thereof.

22 Sec. 35. Section 25-2140, Reissue Revised Statutes of
23 Nebraska, is amended to read:

24 25-2140. After ~~such petition shall be~~ a complaint for
25 foreclosure or satisfaction of a mortgage is filed, while the same
26 is pending, and after a decree is rendered thereon, no proceedings
27 whatever shall be had at law for the recovery of the debt secured
28 by the mortgage, or any part thereof, unless authorized by the

1 court.

2 Sec. 36. Section 25-2142, Reissue Revised Statutes of
3 Nebraska, is amended to read:

4 25-2142. Upon filing a ~~petition~~ complaint for the
5 foreclosure or satisfaction of a mortgage, the complainant shall
6 state therein whether any proceedings have been had at law for the
7 recovery of the debt secured thereby, or any part thereof, and
8 whether such debt, or any part thereof, has been collected and
9 paid.

10 Sec. 37. Section 25-2143, Reissue Revised Statutes of
11 Nebraska, is amended to read:

12 25-2143. If it ~~shall appear~~ appears that any judgment
13 has been obtained in a suit at law for the money demanded by such
14 ~~petition~~ complaint, or any part thereof, no proceedings shall be
15 had in such case, unless to an execution against the property of
16 the defendant in such judgment the sheriff or other proper officer
17 ~~shall have~~ has returned that the execution is unsatisfied in whole
18 or in part, and that the defendant has no property whereof to
19 satisfy such execution except the mortgaged premises.

20 Sec. 38. Section 25-2148, Reissue Revised Statutes of
21 Nebraska, is amended to read:

22 25-2148. Whenever a ~~petition shall be~~ complaint is filed
23 for the satisfaction or foreclosure of any mortgage, upon which
24 there ~~shall be~~ is due any interest on any portion or installment of
25 the principal, and there ~~shall be~~ are other portions or
26 installments to become due subsequently, the ~~petition~~ complaint
27 shall be dismissed upon the defendant's bringing into court, at any
28 time before the decree of sale, the principal and interest due,

1 with costs.

2 Sec. 39. Section 25-2151, Reissue Revised Statutes of
3 Nebraska, is amended to read:

4 25-2151. If, in the case mentioned in section 25-2150,
5 there shall be any default subsequent to such decree in the payment
6 of any portion or installment of the principal, or any interest due
7 upon such mortgage, the court may, upon the ~~petition~~ complaint of
8 the complainant, by a further order, founded upon such first
9 decree, direct a sale of so much of the mortgaged premises to be
10 made, under such decree, as will be sufficient to satisfy the
11 amount so due, with the costs of such ~~petition~~ complaint and
12 subsequent proceedings thereon, and the same proceedings may be had
13 as often as a default shall happen.

14 Sec. 40. Section 25-2162, Reissue Revised Statutes of
15 Nebraska, is amended to read:

16 25-2162. On the return day of the alternative writ, or
17 such further day as the court may allow, the party on whom the writ
18 shall have been served may show cause, by answer made, in the same
19 manner as an answer to a ~~petition~~ complaint in a civil action.

20 Sec. 41. Section 25-2170, Reissue Revised Statutes of
21 Nebraska, is amended to read:

22 25-2170. The ~~petition must~~ complaint shall describe the
23 property, and the several interests and estates of the several
24 joint owners, or lessees thereof, if known. All tenants in common,
25 joint tenants, or lessees of any estate in land or interest
26 therein, or of any mineral, coal, petroleum, or gas rights, may be
27 compelled to make or suffer partition of such estate or estates in
28 the manner hereinafter prescribed.

1 Sec. 42. Section 25-2171, Reissue Revised Statutes of
2 Nebraska, is amended to read:

3 25-2171. If the number of shares or interests is known,
4 but the owners thereof are unknown, or if there are, or are
5 supposed to be, any interests which are unknown, contingent or
6 doubtful, these facts ~~must~~ shall be set forth in the ~~petition~~
7 complaint with reasonable certainty.

8 Sec. 43. Section 25-2178, Reissue Revised Statutes of
9 Nebraska, is amended to read:

10 25-2178. If the statements in the ~~petition and answers~~
11 ~~are not~~ complaint are not denied in the answer or contradicted in
12 ~~the manner aforesaid, or~~ by the documentary proof exhibited, as
13 ~~above required,~~ they shall be taken as true.

14 Sec. 44. Section 25-21,108, Reissue Revised Statutes of
15 Nebraska, is amended to read:

16 25-21,108. If, in the proceedings in partition, judgment
17 shall be entered directing partition, as provided in section
18 25-2179, the court shall, after partition or after the confirmation
19 of the sale and the conveyance by the referee, determine a
20 reasonable amount of attorney's fees to be awarded, ~~to the~~
21 ~~attorneys of record in the proceedings,~~ which amount shall be taxed
22 as costs in the proceedings. If the shares confirmed by such
23 judgment and the existence of all encumbrances of which the
24 plaintiff had actual or constructive notice were accurately pleaded
25 in the original ~~petition~~ complaint of the plaintiff, such
26 attorney's fees ~~for the attorney~~ shall be awarded entirely to the
27 attorney for the plaintiff; otherwise, the court shall order such
28 fees for the attorneys to be divided among such of the attorneys of

1 record in the proceedings as ~~shall~~ have filed pleadings upon which
2 any of the findings in the judgment of partition are based. The
3 court shall also determine and tax as costs a reasonable fee for
4 the referee.

5 Sec. 45. Section 25-21,113, Reissue Revised Statutes of
6 Nebraska, is amended to read:

7 25-21,113. In all actions to establish or quiet title to
8 an estate in real estate, all persons in whose favor any interest,
9 right, title, estate in, or lien upon such real estate appears of
10 record shall be made defendants by the names by which they are
11 designated on the record. When it is alleged in the ~~petition~~
12 complaint that there are persons who claim or appear to have some
13 interest in, right or title to, or lien upon such property, and
14 that the ownership of, interest in, right or title to, or lien upon
15 such property of such persons does not appear of record in or by
16 their respective names in the county wherein such property is
17 situated, and that the plaintiff, after diligent investigation and
18 inquiry, is unable to ascertain and does not know the names or
19 whereabouts, if in this state, or the residence of such persons,
20 there shall also be designated as defendants in such action "all
21 persons having or claiming any interest in" (here inserting an
22 accurate and definite description of the property involved)
23 followed by the words "real names unknown". Judgments and decrees
24 rendered in such actions after the defendants so impleaded and
25 designated have been served as provided by statute, shall be
26 conclusive against all defendants impleaded and designated by name,
27 and also against all persons who are not in actual possession of
28 such property, whose ownership of, interest in, rights or title to,

1 or lien upon such property does not appear of record in or by their
2 respective names in the county wherein such property is situated.

3 Sec. 46. Section 25-21,115, Reissue Revised Statutes of
4 Nebraska, is amended to read:

5 25-21,115. It shall be sufficient to allege generally in
6 the ~~petition~~ complaint that the defendants claim or appear to have
7 some interest in, right or title to, or lien upon ~~said~~ the real
8 estate or a part thereof; and it ~~shall not be~~ is not necessary to
9 allege the nature of any adverse claim or that the value of
10 plaintiff's title or estate is lessened thereby. No lien of record
11 or mortgage of record, however, shall be affected by such action
12 unless it is particularly described, and payment or other legal
13 reason for its cancellation, or that it is barred by limitation, is
14 specifically alleged.

15 Sec. 47. Section 25-21,124, Reissue Revised Statutes of
16 Nebraska, is amended to read:

17 25-21,124. Such information shall consist of a plain
18 statement of the facts which constitute the grounds of the
19 proceeding, addressed to the court, which shall stand for an
20 original ~~petition~~ complaint.

21 Sec. 48. Section 25-21,134, Reissue Revised Statutes of
22 Nebraska, is amended to read:

23 25-21,134. When an information is upon the relation of a
24 private individual, it shall be so stated in the ~~petition~~ complaint
25 and proceedings, and such individual shall be responsible for costs
26 in case they are not adjudged against the defendant. In other
27 cases the title of the cause shall be the same as in a criminal
28 prosecution, and the payment of costs shall be regulated by the

1 same rule.

2 Sec. 49. Section 25-21,156, Reissue Revised Statutes of
3 Nebraska, is amended to read:

4 25-21,156. Further relief based on a declaratory
5 judgment or decree may be granted whenever necessary or proper.
6 The application therefor shall be by ~~petition~~ complaint to a court
7 having jurisdiction to grant the relief. If the application ~~be~~ is
8 deemed sufficient, the court shall, on reasonable notice, require
9 any adverse party whose rights have been adjudicated by the
10 declaratory judgment or decree to show cause why further relief
11 should not be granted forthwith.

12 Sec. 50. Section 25-21,202, Reissue Revised Statutes of
13 Nebraska, is amended to read:

14 25-21,202. The claimant shall, in all cases, file a
15 ~~petition~~ complaint setting forth (1) the facts out of which ~~his~~ the
16 claim originally arose; (2) the action of the Legislature, or of
17 any department of the government thereon, if any such has been had;
18 (3) what person or persons is the owner or are the owners thereof,
19 or in anywise interested therein; (4) that no assignment or
20 transfer of the same, or any part thereof, or interest therein, has
21 been made, except as stated in the ~~petition~~ complaint; and (5) that
22 the claimant is justly entitled to the amount claimed therein from
23 the state after allowance of all just credits and setoffs. ~~The~~
24 ~~petition shall be verified as now required in civil actions in the~~
25 ~~district courts.~~

26 Sec. 51. Section 25-21,206, Reissue Revised Statutes of
27 Nebraska, is amended to read:

28 25-21,206. The state may be sued in the district court

1 of the county wherein the capital is situated Lancaster County in
2 any matter founded upon or growing out of a contract, express or
3 implied, originally authorized or subsequently ratified by the
4 Legislature, or founded upon any law of the state. The ~~petition~~
5 complaint in such a case shall be as provided in section 25-21,202,
6 summons shall issue and be served in the same manner as
7 ~~hereinbefore~~ provided, ~~and the~~ in section 25-21,203. The rules of
8 pleading and practice in regard to other civil actions in the
9 district court shall be observed in all actions by or against the
10 state, as far as applicable except as otherwise ~~herein~~ provided,
11 ~~PROVIDED, that when~~ in sections 25-21,201 to 25-21,218. If an
12 action ~~has been~~ is commenced in a county other than as specified
13 ~~herein~~ in this section or section 25-21,203, the court in which the
14 action has been commenced shall have jurisdiction over such action,
15 but upon timely motion by a defendant, the court shall transfer the
16 action to the proper court in the county in which the action should
17 or might have been commenced as ~~herein~~ provided in this section or
18 section 25-21,203. The court in the county to which the action is
19 transferred, in its discretion, may order the plaintiff to pay to
20 the defendant all reasonable expenses, including ~~attorney~~
21 attorney's fees of the defendant or defendants, incurred because of
22 the improper venue or in proceedings to transfer such action.

23 Sec. 52. Section 25-21,223, Reissue Revised Statutes of
24 Nebraska, is amended to read:

25 25-21,223. The summons shall be issued and directed with
26 a copy of the ~~petition~~ complaint attached to the summons, shall
27 state the cause of the complaint, the time and place of trial of
28 the action for possession, and the answer day for other causes of

1 action, and shall notify the defendant that if he or she fails to
2 appear judgment shall be entered against him or her. The summons
3 may be served and returned as in other cases or by any person,
4 except that the summons shall be served within three days,
5 excluding Saturdays, Sundays, and holidays, from the date of its
6 issuance and shall be returnable within five days, excluding
7 Saturdays, Sundays, and holidays, from the date of its issuance.
8 The person making the service shall file with the court an
9 affidavit stating with particularity the manner in which he or she
10 made the service. Trial of the action for possession shall be held
11 not less than ten nor more than fourteen days after the date of
12 issuance of the summons.

13 Sec. 53. Section 25-2210, Reissue Revised Statutes of
14 Nebraska, is amended to read:

15 25-2210. On the appearance docket, the clerk of the
16 district court shall enter all actions in the order in which they
17 were brought, the date of the summons, the time of the return
18 thereof by the officer and his or her return thereon, the time of
19 filing the complaint or petition, and all subsequent pleadings. On
20 the general index he or she shall enter the names of the parties to
21 every suit, both direct and inverse, with the page and book where
22 all proceedings in such action may be found. The judgment record
23 shall contain the names of the judgment debtor and the judgment
24 creditor, arranged alphabetically, the date of the judgment, the
25 amount of the judgment, and the amount of costs, with the page and
26 the book where the judgment may be found. Transcripts of judgments
27 from county courts filed in the district court shall be entered
28 upon the judgment record. Whenever any judgment is paid and

1 discharged, the clerk shall enter such fact upon the judgment
2 record in a column provided for that purpose.

3 Sec. 54. Section 25-2211, Reissue Revised Statutes of
4 Nebraska, is amended to read:

5 25-2211. The trial docket shall be made out by the clerk
6 of the court at least twelve days before the first day of each term
7 of the court; and the actions shall be set for particular days in
8 the order in which the issues were made up, whether of law or of
9 fact, and so arranged that the cases set for each day shall be
10 tried as nearly as may be on that day. For the purpose of
11 arranging the docket, an issue shall be considered as made up when
12 either party is in default of a pleading. If the defendant fails
13 to answer, ~~or demur,~~ the cause for the purpose of this section
14 shall be deemed to be at issue upon questions of fact, but in every
15 such case the plaintiff may move for and take such judgment as he
16 or she is entitled to, on the defendant's default, on or after the
17 day on which ~~said the~~ action ~~shall be~~ is set for trial. No
18 witnesses shall be subpoenaed in any case while the cause stands
19 upon issue of law. ~~+ and whenever~~ Whenever the court ~~shall regard~~
20 regards the ~~demurrer~~ answer in any case as frivolous, and put in
21 for delay only, no leave to answer or reply shall be given, unless
22 upon payment of all costs then accrued in the action. ~~+ PROVIDED,~~
23 ~~when~~ When the number of actions to be docketed ~~shall exceed~~ exceeds
24 three hundred, the judge or judges of the district court for the
25 county may, by rule or order, classify them in such manner as they
26 may deem expedient, and cause them to be placed according to such
27 classifications upon different dockets; and the respective dockets
28 may be proceeded with and causes thereon tried, heard, or otherwise

1 disposed of, concurrently by one or more of the judges. ~~+~~ ~~and~~
2 ~~provision~~ Provision may be made by rule of court that issues of
3 fact shall not be for trial at any term when the number of pending
4 actions ~~shall exceed~~ exceeds three hundred, except upon such
5 previous notice of trial as may be prescribed thereby.

6 Sec. 55. Section 25-2221, Reissue Revised Statutes of
7 Nebraska, is amended to read:

8 25-2221. Except as may be otherwise more specifically
9 provided, the period of time within which an act is to be done in
10 any action or proceeding shall be computed by excluding the day of
11 the act, event, or default after which the designated period of
12 time begins to run. The last day of the period so computed shall
13 be included unless it is a Saturday, a Sunday, or a day during
14 which the offices of courts of record may be legally closed as
15 provided in this section, in which event the period shall run until
16 the end of the next day on which the office will be open.

17 All courts and their offices may be closed on Saturdays,
18 Sundays, and these holidays: New Year's Day, January 1; Birthday
19 of Martin Luther King, Jr., the third Monday in January;
20 President's Day, the third Monday in February; Arbor Day, the last
21 Friday in April; Memorial Day, the last Monday in May; Independence
22 Day, July 4; Labor Day, the first Monday in September; Columbus
23 Day, the second Monday in October; Veterans Day, November 11;
24 Thanksgiving Day, the fourth Thursday in November; the day after
25 Thanksgiving; ~~and~~ Christmas Day, December 25; and all days declared
26 by law or proclamation of the Governor to be holidays. If any such
27 holiday falls on Sunday, the following Monday shall be a holiday.
28 If any such holiday falls on Saturday, the preceding Friday shall

1 be a holiday. Court offices shall be open on all other days. If
2 the date designated by the state for observance of any legal
3 holiday pursuant to this section, except Veterans Day, is different
4 from the date of observance of such holiday pursuant to a federal
5 holiday schedule, the federal holiday schedule shall be observed.

6 Sec. 56. Section 25-2226, Reissue Revised Statutes of
7 Nebraska, is amended to read:

8 25-2226. The words found in Chapter 25 ~~this code~~ shall
9 be construed and held to mean as follows: Complainant ~~shall mean~~
10 means plaintiff; bill ~~or complaint shall mean~~ petition means
11 complaint; suit ~~shall mean~~ means action or civil action; and decree
12 ~~shall mean~~ means judgment; and all other words and terms found in
13 ~~this code~~ Chapter 25, heretofore applicable to the chancery
14 practice hereby repealed, shall be so construed and held as to
15 carry out the intention of ~~this code~~ such chapter, prevent a
16 failure of justice, and give adequate relief in all cases.

17 Sec. 57. Section 25-2704, Revised Statutes Supplement,
18 2000, is amended to read:

19 25-2704. In any civil action in county court, the
20 summons, pleadings, and time for filings shall be the same as
21 provided for civil actions in district court. ~~The summons shall be~~
22 ~~returnable twenty days after the date of issue as provided in~~
23 ~~section 25-507.01. The answer or demurrer of the defendant shall~~
24 ~~be filed within thirty days after service of the summons and~~
25 ~~petition or completion of service by publication, whichever is~~
26 ~~later, as provided in section 25-821. The reply or demurrer of the~~
27 ~~plaintiff shall be filed within fifteen days after the filing of~~
28 ~~the answer as provided in section 25-821. The court, for good~~

1 ~~cause shown, may extend the time for filing an answer or reply.~~
2 ~~The~~ A case shall stand for trial at the earliest available time on
3 the court docket after the issues therein are or, according to the
4 times fixed for pleading, should have been made up.

5 Sec. 58. Section 25-2805, Revised Statutes Supplement,
6 2000, is amended to read:

7 25-2805. All matters in the Small Claims Court shall be
8 tried to the court without a jury. Except as provided in section
9 25-2618.01, any defendant in an action or such defendant's attorney
10 may transfer the case to the regular docket of the county court by
11 giving notice to the court at least two days prior to the time set
12 for the hearing. Upon such notice the case shall be transferred to
13 the regular docket of the county court. At the same time as such
14 notice is given to transfer the case, any defendant or such
15 defendant's attorney may demand trial by jury, and the Small Claims
16 Court shall forward the demand to the county court. The party
17 causing the transfer of a case from the Small Claims Court to the
18 regular docket shall pay as a fee the difference between the fee
19 for filing a claim in Small Claims Court and the fee for filing a
20 claim on the regular docket.

21 In any action transferred to the regular docket there
22 shall be no further pleadings, ~~demurrers~~, motions challenging
23 pleadings, or discovery unless ordered by the court upon a showing
24 that any such procedure is necessary to the prompt and just
25 determination of the action.

26 Sec. 59. Section 25-2924, Revised Statutes Supplement,
27 2001, is amended to read:

28 25-2924. (1) Settlement escrow is a one-time, voluntary

1 process by which the parties to an action seek to resolve their
2 dispute. The settlement escrow process may be initiated at any
3 time before trial by either party. The use of a settlement escrow
4 does not preclude the use of any other dispute resolution or
5 settlement process to which the parties may agree.

6 (2) Settlement escrow may only be used in district court
7 civil actions that involve only monetary remedies. Such remedies
8 may include, but are not limited to, damages, court costs, and
9 attorney's fees.

10 (3) If a settlement escrow is conducted and fails to
11 result in a settlement, the parties may not initiate a second
12 settlement escrow for the same action.

13 Sec. 60. Section 25-2925, Revised Statutes Supplement,
14 2001, is amended to read:

15 25-2925. Subsequent to the initial filing of a district
16 court civil action involving only monetary remedies, ~~the parties to~~
17 ~~an action shall receive from the clerk of the court information~~
18 ~~regarding settlement escrow.~~ A a party to an action wishing to
19 initiate a settlement escrow shall notify the escrow agent in
20 writing. Upon receiving a written request from the initiating
21 party, the escrow agent shall contact the responding party in
22 writing to see whether or not the responding party also wishes to
23 participate. If both parties agree in writing to participate, the
24 escrow agent shall begin the settlement escrow. ~~Failure to agree~~
25 ~~to initiate a settlement escrow does not preclude an agreement by~~
26 ~~the parties to initiate a settlement escrow at a later time.~~

27 Sec. 61. Section 25-2928, Revised Statutes Supplement,
28 2001, is amended to read:

1 25-2928. The State Court Administrator's office shall
2 create all forms and worksheets used by escrow agents. ~~and the~~
3 ~~information regarding settlement escrow that is distributed by the~~
4 ~~clerks of the courts.~~ The office shall train all escrow agents on
5 settlement escrow. Escrow agents shall complete settlement escrow
6 training conducted by the office prior to conducting a settlement
7 escrow.

8 Sec. 62. Sections 25-2922 to 25-2928 terminate on July
9 1, 2004.

10 Sec. 63. Section 29-2709, Revised Statutes Supplement,
11 2001, is amended to read:

12 29-2709. When any costs in misdemeanor, traffic, felony
13 preliminary, or juvenile cases in county court, except for those
14 costs provided for in subsection (3) of section 24-703 and two
15 dollars of the fee provided in section 33-107.01, are found by a
16 county judge to be uncollectible for any reason, including the
17 dismissal of the case, such costs shall be deemed waived unless the
18 judge, in his or her discretion, enters an order assessing such
19 portion of the costs as by law would be paid over by the court to
20 the State Treasurer as follows:

21 (1) In all cases brought by or with the consent of the
22 county attorney, all such uncollectible costs shall be certified by
23 the clerk of the court to the county clerk who shall present the
24 bills therefor to the county board. The county board shall pay
25 from the county general fund all such bills found by the board to
26 be lawful; and

27 (2) In all cases brought under city or village ordinance,
28 all such uncollectible costs shall be certified to the appropriate

1 city or village officer authorized to receive claims who shall
2 present the bills therefor to the governing body of the city or
3 village in the same manner as other claims. Such governing body
4 shall pay from the general fund of the city or village all such
5 bills as are found to be lawful.

6 Sec. 64. Section 29-3920, Reissue Revised Statutes of
7 Nebraska, is amended to read:

8 29-3920. The Legislature finds that:

9 (1) County property owners should be given some relief
10 from the obligation of providing mandated indigent defense services
11 which in most instances are required because of state laws
12 establishing crimes and penalties;

13 (2) Property tax relief can be accomplished if the state
14 begins to assist the counties with the obligation of providing
15 indigent defense services required by state laws establishing
16 crimes and penalties;

17 (3) Property tax relief in the form of state assistance
18 to the counties of Nebraska in providing for indigent defense
19 services will also increase accountability because the state, which
20 is the governmental entity responsible for passing criminal
21 statutes, will likewise be responsible for paying some of the
22 costs;

23 (4) Property tax relief in the form of state assistance
24 to the counties of Nebraska in providing for indigent defense
25 services will also improve inconsistent and inadequate funding of
26 indigent defense services by the counties;

27 (5) Property tax relief in the form of state assistance
28 to the counties of Nebraska in providing for indigent defense

1 services will also lessen the impact on county property taxpayers
2 of the cost of a high profile death penalty case which can
3 significantly affect the finances of the counties; and

4 (6) To accomplish property tax relief in the form of the
5 state assisting the counties of Nebraska in providing for indigent
6 defense services, the ~~County Revenue Assistance~~ Commission on
7 Public Advocacy Operations Cash Fund should be established to fund
8 the operation of the Commission on Public Advocacy.

9 Sec. 65. Section 29-3921, Revised Statutes Supplement,
10 2001, is amended to read:

11 29-3921. The ~~County Revenue Assistance~~ Commission on
12 Public Advocacy Operations Cash Fund is created. The fund shall be
13 used for the operations of the commission. The fund shall consist
14 of ~~money appropriated from the General Fund and~~ money remitted
15 pursuant to section 29-3931. Any money in the fund available for
16 investment shall be invested by the state investment officer
17 pursuant to the Nebraska Capital Expansion Act and the Nebraska
18 State Funds Investment Act. Any money in the County Revenue
19 Assistance Fund on the operative date of this section shall be
20 transferred to the Commission on Public Advocacy Operations Cash
21 Fund.

22 Sec. 66. Section 29-3927, Revised Statutes Supplement,
23 2001, is amended to read:

24 29-3927. (1) With respect to its duties under section
25 29-3923, the commission shall:

26 (a) Adopt and promulgate rules and regulations for its
27 organization and internal management and rules and regulations
28 governing the exercise of its powers and the fulfillment of its

1 purpose;

2 (b) Appoint and abolish such advisory committees as may
3 be necessary for the performance of its functions and delegate
4 appropriate powers and duties to them;

5 (c) Accept and administer loans, grants, and donations
6 from the United States and its agencies, the State of Nebraska and
7 its agencies, and other sources, public and private, for carrying
8 out the functions of the commission;

9 (d) Enter into contracts, leases, and agreements
10 necessary, convenient, or desirable for carrying out its purposes
11 and the powers granted under this section with agencies of state or
12 local government, corporations, or persons;

13 (e) Acquire, hold, and dispose of personal property in
14 the exercise of its powers;

15 (f) Provide legal services to indigent persons through
16 the divisions in section 29-3930; and

17 (g) Adopt guidelines and standards, which are recommended
18 to the commission by the council, for county indigent defense
19 systems, including, but not limited to, standards relating to the
20 following: The use and expenditure of funds ~~in the County Revenue~~
21 ~~Assistance Fund~~ appropriated by the Legislature to reimburse
22 counties which qualify for reimbursement; attorney eligibility and
23 qualifications for court appointments; compensation rates for
24 salaried public defenders, contracting attorneys, and
25 court-appointed attorneys and overall funding of the indigent
26 defense system; maximum caseloads for all types of systems; systems
27 administration, including rules for appointing counsel, awarding
28 defense contracts, and reimbursing defense expenses; conflicts of

1 interest; continuing legal education and training; and availability
2 of supportive services and expert witnesses.

3 (2) The standards adopted by the commission under
4 subdivision (1)(g) of this section are intended to be used as a
5 guide for the proper methods of establishing and operating indigent
6 defense systems. The standards are not intended to be used as
7 criteria for the judicial evaluation of alleged misconduct of
8 defense counsel to determine the validity of a conviction. They
9 may or may not be relevant in such judicial evaluation, depending
10 upon all the circumstances.

11 (3) With respect to its duties related to the provision
12 of civil legal services to eligible low-income persons, the
13 commission shall have such powers and duties as described in
14 sections 25-3001 to 25-3004.

15 Sec. 67. Section 29-3931, Revised Statutes Supplement,
16 2001, is amended to read:

17 29-3931. (1) In cases in which the capital litigation
18 division or appellate division has been appointed, the chief
19 counsel shall make a showing to the county or district court for
20 the county in which the prosecution arose regarding the
21 commission's cost of defense. The chief counsel shall consider the
22 complexity of the case, the amount of expenses involved, and the
23 ability of the county to pay the costs, in determining how often to
24 make a showing to the court. A showing shall be made no more than
25 once a month and shall be made once after the case is completed.
26 The cost shall be based upon (a) the actual time spent by
27 commission staff attorneys and their hourly rates of pay, including
28 benefits, (b) a reasonable amount for administrative and support

1 staff time, (c) the actual expenditures for litigation support,
2 such as expert witnesses, depositions, photocopying, printing, and
3 travel and lodging expenses, and (d) a reasonable amount for office
4 overhead, including rent, telephone, and utilities. The cost of
5 defense shall not include any expense incurred by the commission's
6 staff for travel time or mileage between the commission's office
7 and the place where the particular case's venue is had or for
8 lodging and meals when the staff must be away from the office for
9 more than one day. After a hearing, the county or district court
10 shall order the county to pay one-third of the commission's cost of
11 defense. The county shall pay the costs to the commission which
12 shall remit the amount to the State Treasurer for credit to the
13 County Revenue Assistance Commission on Public Advocacy Operations
14 Cash Fund. In cases in which commission staff is using money to
15 represent indigent clients and that money is associated with any
16 federal grant money or state match money, the chief counsel shall
17 only bill counties for actual expenditures for litigation support,
18 such as expert witnesses, depositions, photocopying, printing, and
19 travel and lodging expenses.

20 (2) In cases under the DNA Testing Act, costs shall be
21 paid as provided in such act.

22 Sec. 68. Section 29-3932, Revised Statutes Supplement,
23 2001, is amended to read:

24 29-3932. (1) The Indigent Defense Standards Advisory
25 Council is created. The council shall consist of seven members,
26 including the elected public defenders for Douglas County and
27 Lancaster County, the chief counsel, and four members who have
28 substantial experience in providing indigent defense services

1 either as a public defender, contracting attorney, or
2 court-appointed attorney and who are nominated by the Nebraska
3 Criminal Defense Attorneys Association and appointed by the
4 commission. The four members who are appointed by the commission
5 shall serve a ~~term~~ terms of four years, except that, of the members
6 first appointed, one member shall serve a term of one year, one
7 member shall serve a term of two years, one member shall serve a
8 term of three years, and one member shall serve a term of four
9 years. A member may be reappointed at the expiration of his or her
10 term. Any vacancy occurring other than by expiration of a term
11 shall be filled for the remainder of the unexpired term in the same
12 manner as the original appointment. The council shall select one
13 of its members as chairperson.

14 (2) Notwithstanding any other provision of law,
15 membership on the council shall not disqualify any member from
16 holding his or her office or position or cause the forfeiture
17 thereof.

18 (3) Members of the council shall serve without
19 compensation, but they shall be entitled to reimbursement for their
20 actual and necessary expenses as provided in sections 81-1174 to
21 81-1177.

22 (4) The council shall be responsible for developing and
23 recommending to the commission guidelines and standards for county
24 indigent defense systems, including, but not limited to, standards
25 relating to the following: The use and expenditure of funds ~~in the~~
26 County Revenue Assistance Fund appropriated by the Legislature to
27 reimburse counties which qualify for reimbursement; attorney
28 eligibility and qualifications for court appointments; compensation

1 rates for salaried public defenders, contracting attorneys, and
2 court-appointed attorneys and overall funding of the indigent
3 defense system; maximum caseloads for all types of systems; systems
4 administration, including rules for appointing counsel, awarding
5 defense contracts, and reimbursing defense expenses; conflicts of
6 interest; continuing legal education and training; and availability
7 of supportive services and expert witnesses.

8 Sec. 69. Section 29-3933, Revised Statutes Supplement,
9 2001, is amended to read:

10 29-3933. (1) Any county which intends to request
11 reimbursement for a portion of its expenditures for its indigent
12 defense system must comply with this section.

13 (2) On or before May 15 of In order to assist the
14 Commission on Public Advocacy in its budgeting process for
15 determining future reimbursement amounts, after July 1, 2002, and
16 before July 15, 2002, and for each year thereafter in which the
17 county intends to seek reimbursement for a portion of its
18 expenditures for indigent defense services in felony cases for the
19 next fiscal year, the county shall present to the Commission on
20 Public Advocacy (a) a plan, in a format approved by the commission,
21 describing how the county intends to provide indigent defense
22 services in felony cases, (b) a statement of intent declaring that
23 the county intends to comply with the standards set by the
24 commission for felony cases and that the county intends to apply
25 for reimbursement, and (c) a projection of the total dollar amount
26 of expenditures for that county's indigent defense services in
27 felony cases for the next fiscal year.

28 (3) The commission may conduct whatever investigation is

1 necessary and may require certifications by key individuals in the
2 criminal justice system, in order to determine if the county is in
3 compliance with the standards. If a county is certified by the
4 commission as having met the standards established by the
5 commission for felony cases, the county shall be eligible for
6 reimbursement according to the following schedule and procedures:
7 The county clerk of the county seeking reimbursement may submit, on
8 a quarterly basis, a certified request to the commission, for
9 reimbursement from ~~the County Revenue Assistance Fund~~ funds
10 appropriated by the Legislature, for an amount equal to one-fourth
11 of the county's actual expenditures for indigent defense services
12 in felony cases.

13 (4) Upon certification by the county clerk of the amount
14 of the expenditures, and a determination by the commission that the
15 request is in compliance with the standards set by the commission
16 for felony cases, the commission shall quarterly authorize an
17 amount of reimbursement to the county as set forth in this section.

18 (5) If the ~~General Funds~~ appropriated funds are
19 insufficient in any quarter to meet the amount needed for full
20 payment of all county reimbursements for net expenditures that are
21 certified for that quarter, the commission shall pay the counties
22 their pro rata share of the remaining funds based upon the
23 percentage of the county's certified request in comparison to the
24 total certified requests for that quarter.

25 (6) For purposes of section 13-519, for any year in which
26 a county first seeks reimbursement from ~~the County Revenue~~
27 ~~Assistance Fund~~ funds appropriated by the Legislature or has
28 previously qualified for reimbursement and is seeking additional

1 reimbursement for improving its indigent criminal defense program,
2 the last prior year's total of restricted funds shall be the last
3 prior year's total of restricted funds plus any increased amount
4 budgeted for indigent defense services that is required to develop
5 a plan and meet the standards necessary to qualify for
6 reimbursement of expenses from ~~the County Revenue Assistance Fund~~
7 funds appropriated by the Legislature.

8 Sec. 70. Section 29-4121, Revised Statutes Supplement,
9 2001, is amended to read:

10 29-4121. The cost of DNA testing ordered under
11 subsection (5) of section 29-4120 shall be paid by the person
12 filing the motion, unless the court determines such person to be
13 indigent. If the person filing such motion is determined by the
14 court to be indigent, the costs shall be paid by the state in the
15 following manner:

16 (1) If the Commission on Public Advocacy has been
17 appointed to represent the person filing the motion, as determined
18 under section 29-4122, the costs of testing shall be paid by the
19 commission from ~~the County Revenue Assistance Fund~~ funds
20 appropriated by the Legislature; and

21 (2) If the Commission on Public Advocacy has not been
22 appointed to represent the person filing the motion, the court
23 shall hold a hearing to determine the costs for DNA testing. The
24 court shall order the commission to pay such costs. The order
25 shall be forwarded by the clerk of the court to the commission,
26 along with copies of all invoices for such DNA testing. Upon
27 receipt, the commission shall pay such costs from ~~the County~~
28 ~~Revenue Assistance Fund~~ funds appropriated by the Legislature.

1 Sec. 71. Section 29-4122, Revised Statutes Supplement,
2 2001, is amended to read:

3 29-4122. Upon a showing by the person that DNA testing
4 may be relevant to the person's claim of wrongful conviction, the
5 court shall appoint counsel for an indigent person as follows:

6 (1) The court shall first contact the chief counsel for
7 the Commission on Public Advocacy to inquire if the commission is
8 able to accept the appointment. If the chief counsel determines
9 that the commission can accept the appointment, then the court
10 shall appoint the commission pursuant to the County Revenue
11 Assistance Act; and

12 (2) If the chief counsel declines the appointment because
13 of a conflict of interest or the case would exceed the caseload
14 standards set by the commission, then the court shall appoint an
15 attorney licensed to practice law in this state with at least five
16 years experience in felony litigation to represent the indigent
17 person at all stages of the proceedings. Counsel appointed under
18 this subdivision, other than the public defender, shall obtain
19 leave of court before proceeding beyond an initial direct appeal to
20 either the Court of Appeals or the Supreme Court to any further
21 direct, collateral, or postconviction appeals to state or federal
22 courts. Counsel appointed under this subdivision shall file an
23 application for fees and expenses in the district court which
24 appointed him or her for all fees and expenses reasonable necessary
25 to permit him or her to effectively and competently represent the
26 client. The court, upon hearing the application, shall fix
27 reasonable attorney's fees and expenses. The court's order shall
28 require that such fees and expenses be paid by the Commission on

1 Public Advocacy from ~~the County Revenue Assistance Fund~~ funds
2 appropriated by the Legislature. Upon receipt of the order, the
3 commission shall pay such fees and expenses in the full amount
4 determined by the court.

5 Sec. 72. Section 33-107.01, Reissue Revised Statutes of
6 Nebraska, is amended to read:

7 33-107.01. A legal services fee of ~~two~~ five dollars
8 shall be taxed as costs in each case filed in each separate
9 juvenile court and district court, including appeals to such
10 courts, and on each case filed in each county court except those
11 filed in county court pursuant to its jurisdiction under
12 subdivision (5) of section 24-517 or section 25-2802. A legal
13 services fee of ~~two~~ five dollars shall be taxed as costs for each
14 appeal and original action filed in the Court of Appeals and the
15 Supreme Court. Such fees shall be remitted to the State Treasurer
16 on forms prescribed by the State Treasurer within ten days after
17 the close of each month for credit to the Legal Aid and Services
18 Fund.

19 Sec. 73. Section 42-351, Reissue Revised Statutes of
20 Nebraska, is amended to read:

21 42-351. (1) In proceedings under sections 42-347 to
22 42-381, the court shall have jurisdiction to inquire into such
23 matters, make such investigations, and render such judgments and
24 make such orders, both temporary and final, as are appropriate
25 concerning the status of the marriage, the custody and support of
26 minor children, the support of either party, the settlement of the
27 property rights of the parties, and the award of costs and
28 attorney's fees.

1 (2) When final orders relating to proceedings governed by
2 sections 42-347 to 42-381 are on appeal and such appeal is pending,
3 the court that issued such orders shall retain jurisdiction to
4 provide for such orders regarding custody, visitation, or support,
5 orders shown to be necessary to allow the use of property or to
6 prevent the irreparable harm to or loss of property during the
7 pendency of such appeal, or other appropriate orders in aid of the
8 appeal process. Such orders shall not be construed to prejudice
9 any party on appeal.

10 Sec. 74. Section 44-2833, Reissue Revised Statutes of
11 Nebraska, is amended to read:

12 44-2833. (1) If the insurer of a health care provider
13 shall agree to settle its liability on a claim against its insured
14 by payment of its policy limits of two hundred thousand dollars and
15 the claimant shall demand an amount in excess thereof for a
16 complete and final release and if no other health care provider is
17 involved, the procedures prescribed in this section shall be
18 followed.

19 (2) A ~~petition~~ motion shall be filed by the claimant with
20 the court in which the action is pending against the health care
21 provider or, if no action is pending, the claimant shall file a
22 complaint in one of the district courts of the State of Nebraska,
23 seeking approval of an agreed settlement, if any, or demanding
24 payment of damages from the Excess Liability Fund.

25 (3) A copy of such ~~petition~~ motion or complaint shall be
26 served on the director, the health care provider, and the health
27 care provider's insurer and shall contain sufficient information to
28 inform the parties concerning the nature of the claim and the

1 additional amount demanded. The health care provider and his or
2 her insurer shall have a right to intervene and participate in the
3 proceedings.

4 (4) The director, with the consent of the health care
5 provider, may agree to a settlement with the claimant from the
6 Excess Liability Fund. Either the director or the health care
7 provider may file written objections to the payment of the amount
8 demanded. The agreement or objections to the payment demanded
9 shall be filed within twenty days after the ~~petition~~ motion or
10 complaint is filed.

11 (5) After the ~~petition~~ motion or complaint, agreement,
12 and objections, if any, have been filed, the judge ~~of the court in~~
13 ~~which such petition is filed~~ shall set the matter for trial as soon
14 as practicable. The court shall give notice of the trial to the
15 claimant, the health care provider, and the director.

16 (6) At the trial, the director, the claimant, and the
17 health care provider may introduce relevant evidence to enable the
18 court to determine whether or not the ~~petition~~ settlement should be
19 approved if it has been submitted on agreement without objections.
20 If the director, the health care provider, and the claimant shall
21 be unable to agree on the amount, if any, to be paid out of the
22 Excess Liability Fund, the amount of claimant's damages, if any, in
23 excess of the two hundred thousand dollars already paid by the
24 insurer of the health care provider shall be determined at trial.

25 (7) The court shall determine the amount for which the
26 fund is liable and render a finding and judgment accordingly. In
27 approving a settlement or determining the amount, if any, to be
28 paid from the Excess Liability Fund in such a case, the court shall

1 consider the liability of the health care provider as admitted and
2 established by evidence.

3 (8) Any settlement approved by the court may not be
4 appealed. Any judgment of the court fixing damages recoverable in
5 any such contested proceeding shall be appealable pursuant to the
6 rules governing appeals in any other civil case.

7 Sec. 75. Section 44-2840, Reissue Revised Statutes of
8 Nebraska, is amended to read:

9 44-2840. (1) Provision is hereby made for the
10 establishment of medical review panels to review all malpractice
11 claims against health care providers covered by the Nebraska
12 Hospital-Medical Liability Act in advance of filing such actions.

13 (2) No action against a health care provider may be
14 commenced in any court of this state before the claimant's proposed
15 ~~petition~~ complaint has been presented to a medical review panel
16 established pursuant to section 44-2841 and an opinion has been
17 rendered by the panel.

18 (3) The proceedings for action by the medical review
19 panel shall be initiated by the patient or his or her
20 representative by notice in writing with copy of a proposed
21 ~~petition or~~ complaint served upon the director personally or by
22 registered or certified mail. Such notice shall designate the
23 claimant's choice of the physician to serve on the panel,
24 claimant's suggestion of an attorney to serve, and the court where
25 the action shall be filed, if necessary.

26 (4) The claimant may affirmatively waive his or her right
27 to a panel review, and in such case the claimant may proceed to
28 file his or her action directly in court. If the claimant waives

1 the panel review, the claimant shall serve a copy of the ~~petition~~
2 ~~or~~ complaint upon the director personally or by registered or
3 certified mail at the time the action is filed in court.

4 (5) The exercise of the waiver authorized by this section
5 shall not be subject to attack for the sole reason that the
6 claimant served the director with the notice prescribed by
7 subsection (3) of this section prior to July 10, 1984, if the
8 requirements of sections 44-2840 to 44-2847 have not been fulfilled
9 on such date.

10 Sec. 76. Section 44-2841, Reissue Revised Statutes of
11 Nebraska, is amended to read:

12 44-2841. (1) The medical review panel shall consist of
13 one attorney admitted to practice law in the State of Nebraska and
14 three physicians who hold unlimited licenses under the laws of this
15 state to practice medicine. The attorney shall act in an advisory
16 capacity and as chairperson of the panel, but shall have no vote.

17 (2) The medical review panel shall be selected in the
18 following manner:

19 (a) All physicians engaged in the active practice of
20 medicine in this state, whether in the teaching profession or
21 otherwise, who hold a license to practice medicine shall be
22 available for selection;

23 (b) Each party to the action shall have the right to
24 select one physician and, upon selection, such physician shall be
25 required to serve. The two physicians thus selected shall select
26 the third physician panelist. If one of the health care providers
27 involved is a hospital, a fourth panelist shall be selected who
28 shall be a hospital administrator selected by the hospital;

1 (c) When there are multiple plaintiffs or defendants,
2 there shall be only one physician or hospital administrator
3 selected per side. The plaintiff, whether single or multiple,
4 shall have the right to select one physician and the defendant,
5 whether single or multiple, shall have the right to select one
6 physician;

7 (d) A panelist so selected shall serve, except that for
8 good cause shown he or she may be excused. To show good cause for
9 relief from serving, the panelist shall be required to serve an
10 affidavit upon a judge of a court having jurisdiction over the
11 claim when filed. The affidavit shall set out the facts showing
12 that service would constitute an unreasonable burden or undue
13 hardship. The court may excuse the proposed panelist from serving;

14 (e) Within twenty days after receipt of notification of a
15 proposed panelist by the plaintiff, the defendants shall select a
16 proposed panelist and advise the plaintiff or his or her attorney;

17 (f) Within twenty days of receipt of notice of any
18 selection, written challenge without cause may be made to the panel
19 member. Upon challenge, a party shall select another panelist. If
20 multiple plaintiffs or defendants are unable to agree on a
21 physician panelist or if two such challenges are made and
22 submitted, the judge shall submit a list consisting of three
23 qualified panelists and each side shall strike one and the
24 remaining member shall serve in place of the challenged panelist
25 designated by the party; and

26 (g) The parties may agree on the attorney member of the
27 board or, if no agreement can be reached, then five proposed
28 attorney members shall be designated by the judge having

1 jurisdiction of the cause. The parties shall then each strike two
2 names alternately with the claimant striking first until both sides
3 have stricken two names and the remaining name shall be the
4 attorney member of the panel.

5 (3) If the members of the medical review panel have not
6 been selected within one hundred twenty days following filing of
7 the ~~petition~~ or complaint required by section 44-2840, the court
8 shall have authority to select members of the panel and to set a
9 specific date for the hearing.

10 Sec. 77. Section 44-2842, Reissue Revised Statutes of
11 Nebraska, is amended to read:

12 44-2842. (1) The evidence to be considered by the
13 medical review panel shall be promptly submitted by the respective
14 parties in written form only. If any party to the proceedings
15 fails to submit his or her evidence within a reasonable time after
16 notice from the panel requesting such evidence, the panel may
17 proceed to decide the matter on the evidence previously submitted.
18 The determination of reasonable time shall be made by the panel.
19 The evidence submitted may consist of medical charts, X-rays,
20 laboratory test results, excerpts of treatises, depositions of
21 witnesses including parties, and any other form of evidence
22 allowable by the medical review panel.

23 (2) Depositions of parties and witnesses may be taken
24 prior to the convening of the panel and prior to the commencement
25 of the action, but in such event the attorney for the medical care
26 provider shall be furnished with a copy of the ~~petition~~ complaint
27 which the claimant proposes to file at least ten days before any
28 deposition is taken. The patient shall have the right to request

1 and receive all medical and hospital records relating to his or her
2 case which would be admissible in evidence in a court of law. The
3 chairperson of the panel shall advise the panel relative to any
4 legal question involved in the review proceeding and shall prepare
5 the opinion of the panel. A copy of the evidence shall be sent to
6 each member of the panel.

7 (3) Either party, after submission of all evidence and
8 upon ten days' notice to the other side, shall have the right to
9 convene the panel at a time and place agreeable to the members of
10 the panel. At such time either party shall have the right to
11 present argument concerning any matters relevant to issues to be
12 decided by the panel before the issuance of its report. The
13 chairperson of the panel shall preside at all meetings, which
14 meetings shall be informal.

15 (4) If the members of the medical review panel have not
16 convened within six months of the initiation of the proceeding, the
17 judge shall have authority to order the panel to convene.

18 Sec. 78. Section 45-103, Revised Statutes Supplement,
19 2000, is amended to read:

20 45-103. ~~Interest~~ For decrees and judgments rendered
21 before the operative date of this section, interest on decrees and
22 judgments for the payment of money shall be fixed at a rate equal
23 to one percentage point above the bond equivalent yield, as
24 published by the Secretary of the Treasury of the United States, of
25 the average accepted auction price for the last auction of
26 fifty-two-week United States Treasury bills in effect on the date
27 of entry of the judgment. For decrees and judgments rendered on
28 and after the operative date of this section, interest on decrees

1 and judgments for the payment of money shall be fixed at a rate
2 equal to two percentage points above the bond investment yield, as
3 published by the Secretary of the Treasury of the United States, of
4 the average accepted auction price for the first auction of each
5 annual quarter of the twenty-six-week United States Treasury bills
6 in effect on the date of entry of the judgment. The State Court
7 Administrator shall distribute notice of such rate and any changes
8 to it to all Nebraska judges to be in effect two weeks after the
9 date the auction price is published by the Secretary of the
10 Treasury of the United States. This interest rate shall not apply
11 to:

12 (1) An action in which the interest rate is specifically
13 provided by law; or

14 (2) An action founded upon an oral or written contract in
15 which the parties have agreed to a rate of interest other than that
16 specified in this section.

17 Sec. 79. Section 60-4,105, Revised Statutes Supplement,
18 2000, is amended to read:

19 60-4,105. (1) Unless otherwise provided by statute, any
20 person aggrieved by a final decision or order of the director or
21 the Department of Motor Vehicles to cancel, suspend, revoke, or
22 refuse to issue or renew any operator's license, any decision of
23 the director made after consideration of advice from the Health
24 Advisory Board, or suspension of an operator's license under the
25 License Suspension Act may appeal to either the district court of
26 the county in which the person originally applied for the license
27 or the district court of the county in which such person resides
28 or, in the case of a nonresident, to the district court of

1 Lancaster County within thirty days after the date of the final
2 decision or order.

3 (2) Summons shall be served on the department within
4 thirty days after the filing of the petition in the manner provided
5 for service of a summons in section 25-510.02. Within thirty days
6 after service of the petition and summons, the department shall
7 prepare and transmit to the petitioner a certified copy of the
8 official record of the proceedings before the department. The
9 department shall require payment of a five-dollar fee prior to the
10 transmittal of the official record. The petitioner shall file the
11 transcript with the court ~~before answer day as provided in section~~
12 ~~25-821~~ within fourteen days after receiving the transcript from the
13 department.

14 (3) The district court shall hear the appeal as in equity
15 without a jury and determine anew all questions raised before the
16 director. Either party may appeal from the decision of the
17 district court to the Court of Appeals.

18 (4) The appeal procedures described in the Administrative
19 Procedure Act shall not apply to this section.

20 Sec. 80. Section 76-1002, Revised Statutes Supplement,
21 2000, is amended to read:

22 76-1002. (1) Transfers in trust of real property may be
23 made to secure (a) existing debts or obligations created
24 simultaneously with the execution of the trust deed, (b) future
25 advances necessary to protect the security, (c) any future advances
26 to be made at the option of the parties, or (d) the performance of
27 an obligation of any other person named in the trust deed to a
28 beneficiary.

1 (2) Future advances necessary to protect the security
2 shall include, but not be limited to, advances for payment of real
3 property taxes, special assessments, prior liens, hazard insurance
4 premiums, maintenance charges imposed under a condominium
5 declaration or other covenant, and costs of repair, maintenance, or
6 improvements.

7 (3) (a) Except as provided in subdivision (b) of this
8 subsection, all items identified in subsection (1) of this section
9 are equally secured by the trust deed from the time of filing the
10 trust deed as provided by law and have the same priority as the
11 trust deed over the rights of all other persons who acquire any
12 rights in or liens upon the trust property subsequent to the time
13 the trust deed was filed.

14 (b) (i) The trustor or his or her successor in title may
15 limit the amount of optional future advances secured by the trust
16 deed under subdivision (a) of this subsection by filing a notice
17 for record in the office of the register of deeds of each county in
18 which the trust property or some part thereof is situated. A copy
19 of such notice shall be sent by certified mail to the beneficiary
20 at the address of the beneficiary set forth in the trust deed. The
21 amount of such secured optional future advances shall be limited to
22 not less than the amount actually advanced at the time of receipt
23 of such notice by the beneficiary.

24 (ii) If any optional future advance is made by the
25 beneficiary to the trustor or his or her successor in title after
26 receiving written notice of the filing for record of any trust
27 deed, mortgage, lien, or claim against such trust property, then
28 the amount of such optional future advance shall be junior to such

1 trust deed, mortgage, lien, or claim. The notice under this
2 subdivision shall be sent by certified mail to the beneficiary at
3 the address of the beneficiary set forth in the trust deed.

4 (iii) Subdivisions (b)(i) and (ii) of this subsection
5 shall not limit or determine the priority of optional future
6 advances as against construction liens governed by section 52-139.

7 (4) The reduction to zero or elimination of the
8 obligation evidenced by any of the transfers in trust authorized by
9 this section shall not invalidate the operation of this section as
10 to any future advances unless a notice or release to the contrary
11 is filed for record as provided by law. All right, title,
12 interest, and claim in and to the trust property acquired by the
13 trustor or his or her successors in interest subsequent to the
14 execution of the trust deed shall inure to the trustee as security
15 for the obligation or obligations for which the trust property is
16 conveyed in like manner as if acquired before execution of the
17 trust deed.

18 Sec. 81. Section 76-1441, Reissue Revised Statutes of
19 Nebraska, is amended to read:

20 76-1441. The person seeking possession shall file a
21 ~~petition~~ complaint for restitution with the clerk of the district
22 or county court. The ~~petition~~ complaint shall contain (a) the
23 facts, with particularity, on which he or she seeks to recover; (b)
24 a reasonably accurate description of the premises; and (c) the
25 requisite compliance with the notice provisions of the Uniform
26 Residential Landlord and Tenant Act. The ~~petition~~ complaint may
27 notify the tenant that personal property remains on the premises
28 and that it may be disposed of pursuant to section 69-2308. The

1 ~~petition~~ complaint may also contain other causes of action relating
2 to the tenancy, but such causes of action shall be answered and
3 tried separately, if requested by either party in writing.

4 Sec. 82. Section 76-1442, Reissue Revised Statutes of
5 Nebraska, is amended to read:

6 76-1442. The summons shall be issued and directed, with
7 a copy of the ~~petition~~ complaint attached thereto, and shall state
8 the cause of the complaint, the time and place of trial of the
9 action for possession, answer day for other causes of action, and
10 notice that if the defendant fails to appear judgment shall be
11 entered against him or her. The summons may be served and returned
12 as in other cases or by any person, except that the summons shall
13 be served within three days, excluding Saturdays, Sundays, and
14 holidays, from the date of issuance and shall be returnable within
15 five days, excluding Saturdays, Sundays, and holidays, from the
16 date of issuance. The person making the service shall file with
17 the court an affidavit stating with particularity the manner in
18 which he or she made the service. If diligent efforts have been
19 made to serve the summons in the manner provided in sections
20 25-505.01 to 25-516.01 but such efforts were unsuccessful, the
21 summons may be served in the manner provided in section 76-1442.01.

22 Sec. 83. Section 77-1904, Reissue Revised Statutes of
23 Nebraska, is amended to read:

24 77-1904. ~~In all foreclosure proceedings, the plaintiff~~
25 ~~may include in one petition as many tax sale certificates, tax~~
26 ~~deeds, or tax liens as the plaintiff may hold, regardless of~~
27 ~~whether they are upon the same or different items of real property~~
28 ~~and whether the real property covered by them is owned by the same~~

1 ~~or different persons. It shall be sufficient, in the petition and~~
2 ~~in~~ In all foreclosure proceedings, including in the complaint, it
3 is sufficient in such foreclosure suit, to designate the township,
4 range, section, or part of section and the number and description
5 of any lot or block by initial letters, abbreviations, and figures.

6 In describing improvements on leased land for such notice
7 and proceedings, the words "Improvements Only Located Upon" shall
8 precede the designation of such property as set out in this
9 section.

10 Sec. 84. Section 77-1906, Reissue Revised Statutes of
11 Nebraska, is amended to read:

12 77-1906. The plaintiff may also, if desired, include as
13 or make the real property described in the ~~petition~~ complaint a
14 defendant and, if the owners of any such real property are unknown
15 and cannot be found, may proceed against the real property itself,
16 but in such case the service shall be as in the case of an unknown
17 defendant.

18 Sec. 85. Section 77-1917, Revised Statutes Supplement,
19 2000, is amended to read:

20 77-1917. Any person entitled to redeem real property may
21 do so at any time after the decree of foreclosure and before the
22 final confirmation of the sale by paying to the clerk of the
23 district court the amount found due against the property, with
24 interest and costs to the date of redemption and, in addition
25 thereto, when the real property has been sold at sheriff's sale to
26 a purchaser other than the plaintiff, any subsequent taxes paid by
27 such purchaser, as shown by tax receipts filed by such purchaser
28 with the clerk of the district court, with interest at the rate

1 specified in section 45-104.01, as such rate may from time to time
2 be adjusted by the Legislature, from the date or dates of payment
3 of such taxes, and also interest on the purchase price at the same
4 rate, for the use of the purchaser, from the date of sale to the
5 date of redemption. During the pendency of a foreclosure action
6 any person entitled to redeem any lot or parcel may do so by paying
7 to the court the amount due with interest and costs, including
8 attorney's fees, provided for in section 77-1909, if requested in
9 the foreclosure ~~petition~~ complaint. Within thirty days after
10 receipt of payment of all amounts due, the holder of the tax sale
11 certificate shall dismiss its claim in the foreclosure proceeding
12 with respect to any redeemed tax sale certificate. The holder of
13 the tax sale certificate shall be required to provide the county
14 treasurer with written notice that a foreclosure suit has been
15 instituted and provide the county treasurer with an affidavit
16 setting forth the costs incurred in the foreclosure action and
17 indicating whether attorney's fees were requested in the
18 foreclosure ~~petition~~ complaint.

19 The person redeeming any lot or parcel shall be required
20 to provide the county treasurer with an appropriate receipt
21 evidencing the payment to the court of the amount due with interest
22 and costs and the holder of the tax sale certificate shall file
23 with the county treasurer notice of its dismissal of the claim in
24 the foreclosure proceeding.

25 Sec. 86. Section 81-1316, Revised Statutes Supplement,
26 2000, is amended to read:

27 81-1316. (1) All agencies and personnel of state
28 government shall be covered by sections 81-1301 to 81-1319 and

1 shall be considered subject to the State Personnel System, except
2 the following:

3 (a) All personnel of the office of the Governor;

4 (b) All personnel of the office of the Lieutenant
5 Governor;

6 (c) All personnel of the office of the Secretary of
7 State;

8 (d) All personnel of the office of the State Treasurer;

9 (e) All personnel of the office of the Attorney General;

10 (f) All personnel of the office of the Auditor of Public
11 Accounts;

12 (g) All personnel of the Legislature;

13 (h) All personnel of the court systems;

14 (i) All personnel of the Board of Educational Lands and
15 Funds;

16 (j) All personnel of the Public Service Commission;

17 (k) All personnel of the Nebraska Brand Committee;

18 (l) All personnel of the Commission of Industrial
19 Relations;

20 (m) All personnel of the State Department of Education;

21 (n) All personnel of the Nebraska state colleges and the
22 Board of Trustees of the Nebraska State Colleges;

23 (o) All personnel of the University of Nebraska;

24 (p) All personnel of the Coordinating Commission for
25 Postsecondary Education;

26 (q) All personnel of the Governor's Policy Research
27 Office, but not to include personnel within the State Energy
28 Office;

- 1 (r) All personnel of the Commission on Public Advocacy;
 2 (s) All agency heads; and
 3 (t) (s) The Director of Medical Services established
 4 under section 83-125 and the chief executive officers of the
 5 Beatrice State Developmental Center, Lincoln Regional Center,
 6 Norfolk Regional Center, Hastings Regional Center, Grand Island
 7 Veterans' Home, Norfolk Veterans' Home, Thomas Fitzgerald Veterans'
 8 Home, and Western Nebraska Veterans' Home.

9 (2) At each agency head's discretion, up to the following
 10 number of additional positions may be exempted from the State
 11 Personnel System, based on the following agency size categories:

12	Number of Agency	Number of Noncovered
13	Employees	Positions
14	less than 25	0
15	25 to 100	1
16	101 to 250	2
17	251 to 500	3
18	501 to 1000	4
19	1001 to 2000	5
20	2001 to 3000	8
21	3001 to 4000	11
22	4001 to 5000	14
23	over 5000	17

24 The purpose of having such noncovered positions shall be
 25 to allow agency heads the opportunity to recruit, hire, and
 26 supervise critical, confidential, or policymaking personnel without
 27 restrictions from selection procedures, compensation rules, career
 28 protections, and grievance privileges. Persons holding the

1 noncovered positions shall serve at the pleasure of the agency head
2 and shall be paid salaries set by the agency head.

3 In no case shall a current state employee's career
4 protections or coverage by personnel rules and regulations be
5 revoked without the prior written agreement of such employee.

6 Sec. 87. The Revisor of Statutes shall assign section 1
7 of this act to Chapter 25, article 8, and section 2 of this act to
8 Chapter 25, article 2.

9 Sec. 88. Sections 1, 4, 55, 59 to 63, 72, 73, 78, 80,
10 and 89 of this act become operative three calendar months after
11 adjournment of this legislative session. Sections 3, 64 to 71, 86
12 to 88, 91, and 93 of this act become operative on their effective
13 date. The other sections of this act become operative on January
14 1, 2003.

15 Sec. 89. Original sections 24-209, 25-2221, 33-107.01,
16 and 42-351, Reissue Revised Statutes of Nebraska, sections 45-103
17 and 76-1002, Revised Statutes Supplement, 2000, and sections
18 25-2924, 25-2925, 25-2928, and 29-2709, Revised Statutes
19 Supplement, 2001, are repealed.

20 Sec. 90. Original sections 25-217, 25-318, 25-321,
21 25-323, 25-328, 25-330, 25-331, 25-501, 25-503.01, 25-504.01,
22 25-516.01, 25-531, 25-1002, 25-1063, 25-1064.01, 25-1075, 25-1085,
23 25-1102, 25-1321, 25-1715, 25-2005, 25-2124, 25-2125, 25-2137 to
24 25-2140, 25-2142, 25-2143, 25-2148, 25-2151, 25-2162, 25-2170,
25 25-2171, 25-2178, 25-21,108, 25-21,113, 25-21,115, 25-21,124,
26 25-21,134, 25-21,156, 25-21,202, 25-21,206, 25-21,223, 25-2210,
27 25-2211, 25-2226, 44-2833, 44-2840, 44-2841, 44-2842, 76-1441,
28 76-1442, 77-1904, and 77-1906, Reissue Revised Statutes of

1 Nebraska, and sections 25-519, 25-525, 25-1506, 25-2002, 25-2704,
2 25-2805, 60-4,105, and 77-1917, Revised Statutes Supplement, 2000,
3 are repealed.

4 Sec. 91. Original section 29-3920, Reissue Revised
5 Statutes of Nebraska, section 81-1316, Revised Statutes Supplement,
6 2000, and sections 13-518, 29-3921, 29-3927, 29-3931, 29-3932,
7 29-3933, 29-4121, and 29-4122, Revised Statutes Supplement, 2001,
8 are repealed.

9 Sec. 92. The following sections are outright repealed:
10 Sections 25-801 to 25-823, 25-832 to 25-838, 25-841 to 25-856,
11 25-2175, 77-1905, and 77-1907, Reissue Revised Statutes of
12 Nebraska.

13 Sec. 93. Since an emergency exists, this act takes
14 effect when passed and approved according to law.